

REMARKS

Claims 2-4, 6-8, and 10-12 are pending in this application. Claims 2-4, 6-8, and 10-12 stand rejected. By this Amendment, claim 2 has been amended. The amendment made to claim 2 does not alter the scope of this claim, nor has the amendment been made to define over the prior art. Rather, the amendment to claim 2 has been made to improve the form thereof. In light of the amendments and remarks set forth below, Applicant respectfully submits that each of the pending claims is in immediate condition for allowance.

Claim 2 is objected to because of a repetitious phrase in the claim. Applicant has amended the claim to remove the repetitious phrase. Therefore, Applicant respectfully requests that the Examiner withdraw the objection to that claim.

Claims 2-4, 6-8, and 10-12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over European Patent Application No. EP 899,599 ("Nozaki"). Applicant respectfully requests reconsideration and withdrawal of this rejection.

To establish a *prima facie* case of obviousness, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify a reference or combine references to arrive at the claimed subject matter. The prior art references must also teach or suggest all the limitations of the claim in question. See, M.P.E.P. § 706.02(j). A reference can only be used for what it clearly discloses or suggests. See, In re Hummer, 113 U.S.P.Q. 66 (C.C.P.A. 1957); In re Stencel, 4 U.S.P.Q.2d 1071, 1073 (Fed. Cir. 1987). Here, the references, whether taken individually or in combination, do not disclose or suggest the invention claimed by the Applicant.

Among the limitations of the independent claims not present in the cited reference is calculation of the pattern width for said inspected pattern and for the

reference data at the corresponding position by treating the number obtained by dividing said grey level by the grey level step count as the width of the pattern developed in that pixel.

The Office Action acknowledges that “Nozaki does not specifically teach calculation of the pattern width for said inspected pattern and for reference data at the corresponding position by treating the number obtained by dividing said grey level by the grey level step count as the width of the pattern developed in that pixel.” See Office Action at 4. The Office Action then asserts that it would have been obvious to one of ordinary skill in the art that in order to compare the inspected and referenced pattern, the width or the similar features of both patterns are required to be calculated to detect the defect. The Examiner further asserts that in view of the teaching in Nozaki, it would have been obvious for one of ordinary skill in the art, at the time of the invention, to calculate the pattern width for said inspected pattern and for the reference data at the corresponding position by treating the number obtained by dividing said grey level by the grey level step count as the width of the pattern developed in that pixel, as the enlargement pattern correct width can just be viewed as a pattern width. See Office Action at 4. Applicant respectfully disagrees with this position.

In Nozaki, the real image 15 and the reference data 12 are compared to determine whether the target pattern is to be enlarged or reduced. An enlargement correction width for an arbitrary target pattern is determined on the basis of the address of an edge of the corresponding pattern obtained from the real image. First, the number of gradation levels per pixel is obtained. The number of gradation levels per pixel is the maximum gradation value minus the minimum gradation value divided by unit gradation correction value. Merely because the above equation utilizes division does not mean that it corresponds to the calculation step explicitly recited in Applicant’s claim. Nozaki uses the calculations to define an enlargement factor, nothing more. Applicant explicitly recites calculating the pattern width by dividing the obtained grey level by the grey level

step count as the width pattern developed in each pixel. In contrast, the above equation merely represents the number of gradation levels per pixel. The number of gradation levels per pixel indicates the maximum number of gradation values that can be taken when the unit gradation correction value is the gradation difference. See Nozaki, page 4, lines 40-41. Thus, merely because the number of gradation levels per pixel is determined in Nozaki, one skilled in the art would not be motivated to modify Nozaki and add Applicant's expressly recited limitation that the calculation of the pattern width for said inspection pattern and for the reference data at the corresponding position by treating the number obtained by dividing said grey level by the grey level step count as the width of the pattern developed in that pixel.

In fact, Applicant notes that in the two prior Office Actions, the Examiner acknowledged that Nozaki fails to disclose Applicant's above-quoted limitation and repeatedly asserted various other pieces of prior art in an attempt to cure the deficiency present in Nozaki. The Nozaki reference previously failed to include this limitation and still fails to teach Applicant's explicitly recited limitation or suggestion to modify Nozaki to arrive at Applicant's claimed invention. Therefore, Applicant respectfully asserts that the Examiner has failed to set forth a *prima facie* case of obviousness and the rejection in light of Nozaki must be withdrawn.

Applicant has responded to all of the rejections and objections recited in the Office Action. Reconsideration and a Notice of Allowance for all of the pending claims are therefore respectfully requested.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue.

Application No.: 09/735,840

Docket No.: M1912.0020

If the Examiner believes an interview would be of assistance, the Examiner is welcome to contact the undersigned at the number listed below.

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Respectfully submitted,

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